

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ANGELINA GOMEZ,

Petitioner,

v.

SUSAN DAVIS,

Respondent,

Civil No. 2:07-CV-12505

HONORABLE ARTHUR J. TARNOW

UNITED STATES DISTRICT JUDGE

OPINION AND ORDER OF SUMMARY DISMISSAL

Angelina Gomez, ("Petitioner"), presently confined in the Huron Valley Women's Complex in Ypsilanti, Michigan, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On June 14, 2007, Magistrate Judge R. Steven Whalen signed an "Order to Correct Deficiency," in which Petitioner was ordered to submit a \$ 5.00 fee for filing a habeas corpus petition or an application to proceed *in forma pauperis* within twenty one days of the order. On August 9, 2007, this Court dismissed without prejudice Petitioner's action, because of Petitioner's failure to comply with the order. On August 15, 2007, this Court rescinded its original order of dismissal, after it came to the Court's attention that Magistrate Judge Whalen's original order was never sent by the Clerk's Office to petitioner. This Court further ordered Petitioner to correct the deficiency in her filing by submitting a \$ 5.00 fee for filing a habeas corpus petition or an application to proceed *in forma pauperis* within thirty days of the Court's order or face dismissal of the petition. As of this date, petitioner has failed to comply with the Court's order. For the reasons stated below, Petitioner's action is dismissed without prejudice

because of Petitioner's failure to comply with an order of the court.

I. Discussion

Petitioner's application is subject to dismissal, because she failed to comply with this Court's order of deficiency by either submitting the \$ 5.00 filing fee or an application to proceed *in forma pauperis*.

If a prisoner who seeks habeas corpus relief does not comply with a district court's directions in a deficiency order, regarding the prisoner's failure to pay the full filing fee and his failure to provide the required documentation to apply to proceed *in forma pauperis*, the district court must presume that the prisoner is not a pauper, assess the full filing fee, and dismiss the case for want of prosecution. See *Gravitt v. Tyszkiewicz*, 14 Fed. Appx. 348, 349 (6th Cir. 2001)(citing *McGore v. Wigglesworth*, 114 F. 3d 601, 605 (6th Cir. 1997)). This Court's deficiency order clearly stated that Petitioner was required to submit either the \$ 5.00 filing fee or an application to proceed *in forma pauperis*. The deficiency order also expressly warned Petitioner that failure to comply with the order could result in the dismissal of his action. Because Petitioner failed to pay the filing fee or submit the required application to proceed *in forma pauperis*, her petition is subject to dismissal for want of prosecution. *Gravitt*, 14 Fed. Appx. at 349.

II. ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus is DISMISSED WITHOUT PREJUDICE. Nothing in this order precludes Petitioner from submitting a new habeas petition with payment of the filing fee or the *in forma pauperis* application.

S/Arthur J. Tarnow
Arthur J. Tarnow
United States District Judge

Dated: October 9, 2007

I hereby certify that a copy of the foregoing document was served upon counsel of record on October 9, 2007, by electronic and/or ordinary mail.

S/Catherine A. Pickles
Judicial Secretary